

MUNICIPAL WASTEWATER SERVICE AGREEMENT
BETWEEN THE CITY OF CARMEL
AND THE TOWN OF WESTFIELD

THIS AGREEMENT, made and entered into this 30th day of August, 2007, by and between the City of Carmel, a municipal corporation in Hamilton County, Indiana, by and through its Board of Public Works and Common Council (hereinafter referred to as "CARMEL") and the Town of Westfield, a municipal corporation in Hamilton County, Indiana, by and through its Town Council (hereinafter referred to as "WESTFIELD").

WITNESSETH THAT:

WHEREAS, WESTFIELD and CARMEL entered into a wastewater service agreement dated July 23, 1984 (the Carmel/Westfield Agreement"); and

WHEREAS, CARMEL and Hamilton Western Utilities, Inc. ("HWU") entered into a Wastewater Service Agreement dated September 24, 1996 (the "Carmel/HWU Agreement"); and

WHEREAS, both the Carmel/Westfield Agreement and the Carmel/HWU Agreement have been amended several times; and

WHEREAS, the entirety of HWU's utility assets have been sold, with a portion being acquired by Carmel and the remainder by Westfield; and

WHEREAS, to the extent acquired by WESTFIELD, HWU's interests in the Carmel/HWU Agreement were assigned to WESTFIELD; and

WHEREAS, Carmel and Westfield desire to memorialize the terms of the various agreements into one document.

NOW, THEREFORE, it is hereby agreed by and between the parties hereto that CARMEL will accept from WESTFIELD wastewater, liquid wastes, and sewage. The capacity of CARMEL'S sewage treatment facility reserved for WESTFIELD is 2.14 MGD as herein provided, and CARMEL will treat and dispose of the same in a proper manner at its sewage treatment plant subject to the following covenants and conditions.

1. The Carmel/Westfield Agreement and the Carmel/HWU Agreement, together with all prior amendments to either, are hereby superceded in their entirety and replaced with this Agreement

2. CARMEL agrees to accept, treat, and process in a proper manner all wastewater, liquid wastes, and sewage transported from WESTFIELD to CARMEL by means of a sewer interconnection with Carmel's North-South Interceptor at 146th Street, subject to the conditions and limits hereinafter set forth in this Agreement.

3. WESTFIELD has installed and agrees to furnish at its own expense to be operated by CARMEL the necessary metering and sampling equipment and all appurtenant devices for properly measuring and sampling the quantity and quality of wastewater delivered to CARMEL. Calibration of such metering equipment shall be performed not less than once every twelve (12) months or by request of either party. A meter registering not more than five percent (5%) above or below the test result at full scale shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the two (2) months previous to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails

to register for any period, the amount of wastewater treated during such period shall be deemed to be the amount of wastewater treated in the corresponding period immediately prior to the failure.

4. The duly authorized representatives of both WESTFIELD and CARMEL shall have the rights of access at all times to inspect and observe the operation of the meters provided for in the preceding paragraph hereof. The expense of normal, daily operating and maintaining such meters shall be paid by WESTFIELD as part of shared operation and maintenance costs, and any records or charts from such meter or meters shall be kept by CARMEL with copies of maintenance logs and charts delivered to WESTFIELD monthly and original copies shall be subject to examination by WESTFIELD. The expense of annual calibration of such meter shall be paid by WESTFIELD.

5. WESTFIELD agrees to construct and maintain a sewage collection system, including sewers and regulating stations and other structures, as may be required to deliver the flow, covered by this agreement, of wastewater, liquid wastes, and sewage from WESTFIELD to CARMEL. WESTFIELD agrees to use all necessary precautions and diligence to exclude from wastewater, liquid wastes, and sewage transported to CARMEL excessive concentrations of sand, gravel, street waste, grit, leaves, rags, paper, pickling liquor, cyanide, coal tar, oil, grease, acids, dry cleaning fluids, and any other foreign material and industrial wastes which are objectionable, dangerous, and inhibitive to bacterial growth or which for other reasons cannot readily be treated in the sewage treatment plant of CARMEL or may be injurious thereto or are prohibited by the Sewer Use Ordinances of CARMEL, which may be amended from time to time. CARMEL shall not amend such ordinance without first seeking Westfield's review and consent. Upon discovery that unacceptable substances or materials as defined by the Sewer Use

Ordinance of the City of Carmel, Indiana, of 1981, as amended from time to time, or waste or materials deemed unacceptable pursuant to rules and regulations duly promulgated by the U.S. Environmental Protection Agency or the Indiana Stream Pollution Control Board are being discharged by WESTFIELD to CARMEL, WESTFIELD shall be notified and WESTFIELD shall forthwith take appropriate steps to ensure that such unacceptable materials are excluded from future discharges to CARMEL. WESTFIELD shall be liable for any additional costs or damages in the sewerage system and at the wastewater treatment plant in connection with such unacceptable materials delivered from WESTFIELD, including any fines or civil penalties as may be levied by the State of Indiana or Environmental Protection Agency (EPA), for non-compliance with CARMEL's National Pollutant Discharge Elimination System (NPDES) Permit. Upon discovery that any unacceptable substances are being discharged as set forth above:

A. Either party shall immediately notify the other party of such unacceptable sewage or materials, including the location, time or times, the nature of such unacceptable sewage or waste, and such other information as may be available.

B. Upon verbal notification and confirmation thereof in writing, WESTFIELD shall immediately notify that user to cease delivery of such materials and/or waste and continue all necessary monitoring to assure compliance with this agreement.

C. CARMEL shall, in the event WESTFIELD is unable to identify the location, time, and source of such unacceptable sewage, cooperate with WESTFIELD in locating such source. WESTFIELD will use its best efforts to correct or cut off the user

delivering unacceptable wastewater, liquid wastes, and sewage to the parties' sewer system.

D. In the event that the user delivering such unacceptable sewage or materials through WESTFIELD's connection point to CARMEL's sewer system cannot be ascertained within forty eight (48) hours of first notice, then WESTFIELD and CARMEL shall authorize an independent emergency investigation to be instigated forthwith in regard to the matter. WESTFIELD and CARMEL shall fully cooperate with said emergency investigation to ascertain the user delivering such unacceptable sewage or material, severity of damages, and necessary corrective actions.

E. The parties shall determine and agree as to the severity of the physical damage caused to CARMEL's collection and treatment facilities resulting from the discharge of such unacceptable sewage or materials. If the parties are unable to reach such agreement, then either party may within thirty (30) days after said negotiations fail submit the dispute to arbitration pursuant to Paragraph 16 herein.

F. In the event that the parties are unable to ascertain the user delivering such unacceptable sewage or materials through WESTFIELD's interconnection points to the CARMEL sewers, then and in that event, if an emergency exists as to the continuing damage to CARMEL's collection and treatment facilities resulting from the discharge of such unacceptable sewage or materials, CARMEL may seek such equitable or injunctive relief as is necessary or appropriate in a Court of competent jurisdiction.

G. In the event of a finding by a Court or arbitrator that a party has acted arbitrarily, capriciously, or in bad faith regarding the inability of the parties to resolve issues arising out of this paragraph, then the party who has acted in bad faith, arbitrarily

or capriciously, shall pay the litigation expenses of the party who has not acted arbitrarily, capriciously, or in bad faith.

H. In the event it is determined by the appropriate investigative group that the source of physical damage to the CARMEL interceptor and plant does not originate in the WESTFIELD service area, then WESTFIELD shall not be assessed for the damage. However, if the source of such damage cannot be determined to originate from a definite sewer service area, and the sewer service area of WESTFIELD cannot be excluded as a source of the damage, then WESTFIELD shall be assessed a sum equivalent to its proportionate flow as to the whole, as its proportionate cost of repair.

6. WESTFIELD has adopted a Sewer Use and Rate Ordinance as required by PL 92-500, as amended, and said ordinance is compatible with the CARMEL Sewage Use Ordinance as required by PL 92-500, as amended. WESTFIELD shall not amend such ordinance without first seeking Carmel's review and consent.

7. WESTFIELD has enacted an ordinance which prohibits the introduction of surface water and groundwater inflow into its sewage system and will otherwise enforce such prohibition.

8. CARMEL agrees to report to WESTFIELD once each month, before the 15th day of each month, the volume into the CARMEL system during the preceding calendar month. CARMEL agrees to report to WESTFIELD once each quarter, before the 30th day of the new quarter, the results of wastewater strength testing that Carmel performs on WESTFIELD's flow to CARMEL. The characteristics measured or otherwise identified and reported shall include but not be limited to volume and any waste constituents identified in CARMEL's Rate Ordinance and any other tests as may be conducted. Sampling and analysis of WESTFIELD's wastewater,

liquid wastes, and sewage shall be conducted in a comprehensive way at least once each month or as provided elsewhere herein and in accordance with acceptable engineering practice so as to reflect an accurate profile of the sewage to form the basis for fair and equitable variable charges.

9. WESTFIELD reserves the right to verify all records, reports, and status of the wastewater collection system and treatment facilities and may conduct such verifications in accordance with acceptable engineering standards and shall have rights of ingress and egress onto the premises of CARMEL's wastewater collection and treatment facilities as necessary and required to examine and verify documents, records, and facilities as set forth above. WESTFIELD shall give reasonable notice to CARMEL prior to entering the premises of CARMEL. WESTFIELD's activities shall not interfere with the CARMEL wastewater collection and treatment system operation.

10. In the event the equipment (meter or sampler) should for any reason fail to provide CARMEL with required reports and data as provided hereinabove, CARMEL shall make an estimate of the charges due from WESTFIELD based upon prior flows and loadings and bill WESTFIELD therefore as provided in this Agreement. If the correct actual charges due should be later determined, CARMEL shall make appropriate adjustments in the next billing to WESTFIELD.

11. WESTFIELD agrees to pay to CARMEL for the treatment of wastewater, liquid wastes, and sewage from WESTFIELD an amount or amounts to be determined as follows:

A. Volumetric Rates

Effective for service rendered on or after 11/15/2005, WESTFIELD shall pay to CARMEL for the treatment of wastewater, liquid wastes, and sewage from WESTFIELD an amount of \$867.31 per million gallons. This rate, "Calculation of Wholesale Rate for

Operation and Maintenance Cost and for Replacement Cost on Equipment” as shown in Exhibit “A”, shall be reviewed at the election of either party hereto upon written notice and request to the other, not more than annually nor less than every two (2) years and shall be adjusted according to conditions and circumstances existing at the time of any such adjustment. At the time of such adjustment or review, CARMEL shall provide to WESTFIELD a verified statement detailing the calculation of the rate based upon the previous calendar year’s operation and maintenance expense recorded by CARMEL. That rate so determined shall be accepted by WESTFIELD and shall be paid by WESTFIELD to CARMEL until modified again, as herein provided; provided, however, at each said time WESTFIELD shall have the opportunity to examine the books and records of CARMEL pertaining to the costs which determine said figure. That, if WESTFIELD at such time and after such inspection does not agree with the figures of CARMEL, it may submit any difference to a court of competent jurisdiction or arbitration as set out in paragraph 16 of this Agreement.

The monthly charge for operation, maintenance, and replacement shall be determined by multiplying the number of gallons of sewage accepted from WESTFIELD as shown by the meter described in Paragraph 3 herein times the rate calculated.

CARMEL shall, once each month, following the submission of the reports and data as heretofore provided in this Agreement, invoice WESTFIELD at the rate provided herein, and such amount shall be due from WESTFIELD to CARMEL on the 30th day following the receipt of such invoice by WESTFIELD. In the event that WESTFIELD should fail to make payment to CARMEL of the amount of such invoice within the time

so limited, WESTFIELD shall be liable for and shall pay to CARMEL, as a penalty for delinquency in such payment, the same percentage of such invoice, that the sewage rate ordinance and schedule of CARMEL imposes upon all other users of CARMEL's sewage disposal facilities for similar delinquencies in payment.

B. Capital Costs

WESTFIELD has previously paid CARMEL for a portion of the past cost incurred by CARMEL in the construction of its wastewater treatment facility and for a portion of the capacity of the Carmel North-South Interceptor, based upon WESTFIELD's reserved capacity.

C. Maximum Flows.

It is agreed that at the commencement of this Agreement, 2.14 MGD of capacity in CARMEL's sewage treatment facility is reserved for WESTFIELD. To utilize this 17.83% of such treatment capacity, WESTFIELD is entitled to transport via CARMEL'S North South Interceptor up to 781 million gallons of wastewater, liquid wastes, and sewage to CARMEL each year at a peak rate of flow not to exceed the following rates:

2600 GPM for any 3 hours
2.84 MG in any day

In the event WESTFIELD shall transport wastewater, liquid wastes, and sewage to CARMEL in excess of these flows, and in the event the CARMEL has capacity sufficient to accept such increased amount of sewage, then WESTFIELD agrees to pay to CARMEL a surcharge (Exhibit "B") appropriate to the additional capacity used by

WESTFIELD on account of this increased amount of sewage. This surcharge shall not be imposed on the two (2) wettest months provided that the flow delivered by WESTFIELD does not exceed one hundred twenty percent (120%) of the allowable flow as set forth in the above table. Similarly, this surcharge shall not be imposed on the daily, or hourly limitations unless such flows exceed the allowable flows more than twice each calendar month. All daily, weekly, and monthly flows shall be on a common time period based on the regular meter reading schedule as performed by the CARMEL wastewater treatment plant personnel. Alternatively, WESTFIELD may negotiate the purchase of additional plant or interceptor capacity, temporarily or permanently, from the Clay Regional Waste District or any other party who may hereafter possess available capacity in CARMEL's wastewater treatment plant or interceptors. Any such sale or purchase may be consummated after CARMEL is given ninety (90) days written notice of such sale or purchase; provided, however, in the event WESTFIELD desires to purchase additional plant capacity under the terms of this Agreement, then such purchase must have the prior approval of CARMEL if WESTFIELD's flows in the CARMEL North-South Interceptor will exceed 3.74 MGD reserved capacity. Additional plant capacity surcharge shall be as shown on Exhibit "B" for said increased capacity if used continuously for more than six (6) months. In the event WESTFIELD requires additional capacity and cannot acquire such capacity from another party, WESTFIELD shall at its sole discretion and at its own expense fund the expansion of the CARMEL interceptor sewer and treatment facility as designed and constructed by CARMEL, for modular expansion of the interceptor and treatment facilities. Prior to the commencement of a year in which it would appear that WESTFIELD might transport to CARMEL for

treatment wastewater, liquid wastes, and sewage in excess of 2.14 MGD, and in any event prior to WESTFIELD transporting a maximum annual flow in excess of 781 million gallons per 365 day year, WESTFIELD and CARMEL shall reach an agreement as to the amount of such surcharge and the terms and conditions of its payment.

D. Ownership of Carmel System

Both parties understand and agree that the payments called for by this paragraph are intended to compensate and reimburse CARMEL for services rendered in the treatment and disposal of wastewater, liquid wastes, and sewage from WESTFIELD. Except for a reservation of capacity, which capacity shall not be used by any other entity, of the sewage treatment facility for the benefit of WESTFIELD as heretofore set forth herein, such payments shall in no way entitle WESTFIELD to any possessory nor proprietary rights in the sewage treatment and disposal facility of CARMEL. CARMEL reserves the right to operate and maintain such facility and shall have sole discretion as to the methods of operation and the necessity for and nature and extent of improvements thereto, subject to the terms of this Agreement.

12. In the event wastewater, liquid wastes, and sewage is received by CARMEL from WESTFIELD in excess of domestic loadings, BOD, and suspended solids now established, then WESTFIELD shall pay to CARMEL the rate per pound therefore as established in the CARMEL Rate Ordinance. In the event of future changes in the cost of treatment of suspended solids and BOD based upon the studies in conformity with EPA requirements, then WESTFIELD shall be subject to any increased or decreased charges for such excessive pollutants. In the event that future charges are made for other pollutants received by CARMEL and such charges are

uniformly applied throughout the region served by CARMEL, then WESTFIELD shall be subject to such charges.

13. WESTFIELD acknowledges that CARMEL has obtained certain federal grants and that the provisions of PL 92-500 apply to the users within the jurisdiction of WESTFIELD. WESTFIELD agrees to cooperate with CARMEL to the fullest extent so that the provisions of PL 92-500, as amended, will be adhered to and complied with.

14. WESTFIELD agrees to comply with all applicable provisions of the Federal Water Pollution Control Act, as amended by PL 95-217 and PL 97-117 and regulations promulgated thereunder, including 40 CFR Parts 35 and 403, and Indiana statutes relating to pollution abatement. Further, WESTFIELD will implement any requirements of the U.S. Environmental Protection Agency with respect to conditions and limitations of grants sought by CARMEL that are applicable to WESTFIELD and being within the jurisdiction of CARMEL.

15. The parties agree that in the event any provision of this Agreement is declared unacceptable or unenforceable by any agency exercising its appropriate authority, the remainder of the Agreement shall remain in full force and effect and the failing provision(s) shall be amended by good faith negotiations between the parties to cure any such defect.

16. Resolution of Disagreements.

A. The parties hereby agree that if either party believes the effect of this Agreement in any way is inequitable or unfair to its citizens, such party may by thirty (30) days written notice request re-negotiation of any part of this Agreement and the other party will in good faith participate in such negotiations.

B. In the event of a dispute arising under this Agreement which if the parties are unable to solve their problems by negotiations, either party may, within thirty (30)

days after said negotiations fail, submit the dispute to arbitration pursuant to the Commercial Rules of Arbitration of the American Arbitration Association. The parties agree that the arbitrator(s) selected shall have knowledge in the disputed areas. The expense of such arbitration shall be borne jointly and equally by the disputing parties.

C. During any period of re-negotiation and/or arbitration, WESTFIELD shall continue to meet its financial obligations to CARMEL in accordance with the provisions of this Agreement, and CARMEL shall continue to accept and treat WESTFIELD's sewage.

D. CARMEL shall give WESTFIELD ninety (90) days advance written notice of any proposed increase in the costs described in paragraph 11A hereof to afford WESTFIELD an opportunity to review and either accept or dispute such proposed increase. It is expressly understood and agreed that CARMEL shall have the right to proceed with such rate increase even if disputed by WESTFIELD and that WESTFIELD shall be required to continue its payment obligations to CARMEL, including the charges arising out of the disputed rate increase, until such dispute is resolved in accordance with the terms of this paragraph. In the event that such dispute is ultimately resolved in WESTFIELD's favor, then the disputed payments previously made to CARMEL shall be refunded within thirty (30) days to WESTFIELD by CARMEL, together with interest at a rate equal to the maximum FmHA rate in effect at the time of resolution of such dispute.

17. This Agreement shall become effective on the date executed by the parties and shall continue for a period of twenty (20) years.

18. This Agreement shall continue in full force and effect for an indeterminate number of ten (10) year terms after the initial term subject to the same terms and conditions,

unless either of the parties thereto shall notify the other in writing of intention to terminate the same at least twelve (12) months prior to the expiration of the original term or any additional ten (10) year term. The parties may then desire to re-negotiate the terms hereof by reasons of governmental changes or requirements, changes in physical conditions, rates, costs, or expenses of any kind applicable within the twelve (12) month period prior to the expiration of the original term or additional term. Any such renegotiation shall reflect, in good faith, changes in terms and conditions based on the reasons hereinabove set forth.

19. The parties agree that the planning and service areas for each party are reflected upon the map attached hereto as Exhibit "C" and may be changed by agreement of the parties. Unless a planning and service area is changed by agreement of the parties, neither party shall infringe on the other party's planning and service area.

20. This Agreement is expressly made binding upon the successors and assigns of the parties hereto.

CITY OF CARMEL, INDIANA
BY ITS BOARD OF PUBLIC WORKS
AND SAFETY


James Brainard, Presiding Officer


Date:

8/30/07


Mary Ann Burke, Member

Date:

8-30-07


Lori Watson, Member

Date:

ATTEST:


Diana L. Cordray, IAMC Clerk-Treasurer

STATE OF INDIANA)

COUNTY OF)

Hamilton)

SS:

Before me, a Notary Public in and for said County and State, personally appeared James Brainard, Mary Ann Burke, and ~~Lori Watson~~, by me known to be the Members of the City of Carmel Board of Public Works and Safety, and ~~Diana L. Cordray~~ Sandra Johnson, Deputy, Clerk-Treasure of the City of Carmel, who acknowledged the execution of the foregoing "Service Agreement" on behalf of the City of Carmel, Indiana.

Witness my hand and Notarial Seal this 30 day of August, 2007.

C. Ann Davis

NOTARY PUBLIC

C. Ann Davis

Printed Name

My Commission Expires:

4/18/09

My County of Residence: Hamilton

Date: 8/30/07

Approved by the Town of Westfield, Indiana by its Town Council this _____, day of
_____, 2007 by a vote of _____ Ayes _____ Nays

Andy Cook, President

John Dippel

Jack Hart

Robert Horkay

Joe Plankis

Bob Smith

Ron Thomas

ATTEST:

Cindy Gossard, Clerk Treasurer

STATE OF INDIANA)
)
COUNTY OF _____) SS:

Before me, a Notary Public in and for said County and State, personally appeared the Members of the Westfield Town Council and the Clerk-Treasure of the Town of Westfield, who acknowledged the execution of the foregoing "Service Agreement" on behalf of the Town of Westfield, Indiana.

Witness my hand and Notarial Seal this _____ day of _____, 2006.

NOTARY PUBLIC

My Commission Expires:

Printed Name

My County of Residence: _____

Date: _____

(EXHIBITS A THROUGH B ARE ATTACHED)

CARMEL - WESTFIELD
TREATMENT AGREEMENT
EXHIBIT "A"

CALCULATION OF WHOLESALE RATE FOR OPERATION AND
MAINTENANCE COSTS AND FOR REPLACEMENT COST ON EQUIPMENT

<u>Line Item Number</u>		<u>Total Costs</u>	<u>Allocation Percentage</u>	<u>Shared Costs</u>
	Annual operation & maintenance (O & M) expense:			
1	Treatment plant expense	\$	100%	\$
2	Sludge handling disposal exp.		100%	
	Collection system expense			
3	- interceptor sewers		**%	
4	- collection sewers		0%	
5	- lift stations		**%	
6	Billing and collection expense		0%	
7	Industrial monitoring expense		0%	
8	Sub-total			
9	General and administrative expense		***%	
	Total O & M expense			
	Plus: Annual replacement costs on equipment for items of plant benefiting wholesale customers	***		
10				
	Total annual O & M expense and replacement cost on equipment	\$ <u> </u>		
11				
12	Less: Carmel surcharge revenue for excess BOD and SS			
13	Net of surcharge revenue			\$
	Divided by total annual flow received at Carmel treatment plants			÷
14				
15	Rate per million gallons of flow to wholesale customers (including domestic loadings)			\$ <u> </u>

* Allocation percentages to be determined by an engineering analysis.

** Allocation percentage = line item # , shared cost ÷ line item # , total cost.

*** Amount to be determined by the consulting engineers.

CARMEL – WESTFIELD
Treatment Agreement

EXHIBIT B

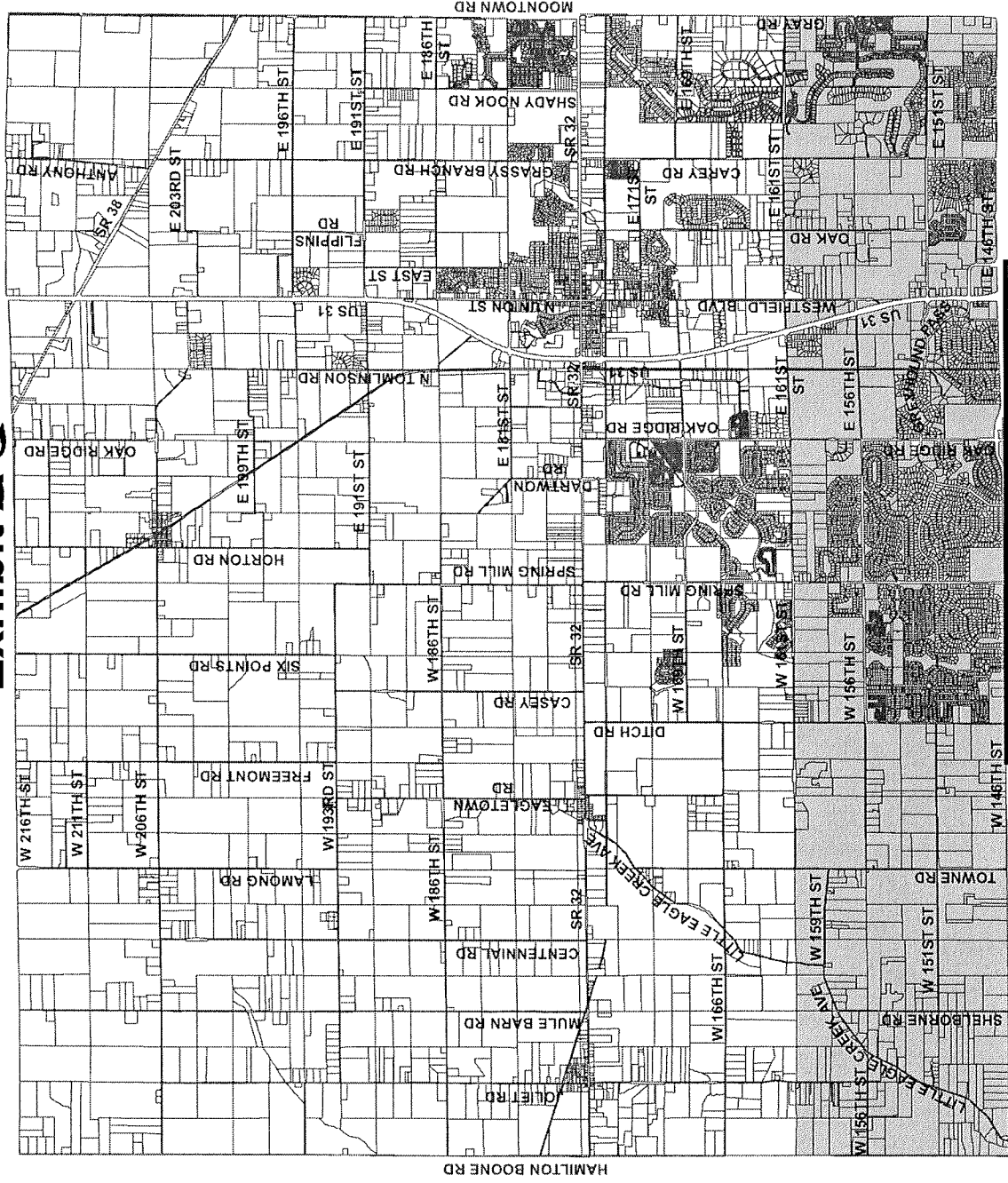
Additional Plant Capacity Surcharge
Calculation

The determination of the Additional Plant Capacity Surcharge shall be calculated by the following:

- 1.) A violation surcharge of one hundred dollars (\$100) per day will be assessed for each day that is determined as a surcharge per the Wastewater Service Agreement between the City of Carmel and the Town of Westfield.
- 2.) All wastewater treated will be assessed a per million gallon treatment rate as determined by the Wastewater Service Agreement between the City of Carmel and the Town of Westfield.

Town of Westfield, IN Sewer Service and Planning Areas

Exhibit C



Map Legend

Sewer Service Areas North Service Area South Service Area

